Nos. 07-21 & 07-25

IN THE

# Supreme Court of the United States

WILLIAM CRAWFORD, *et al.*,
*Petitioners,*

v.

MARION COUNTY ELECTION BOARD, *et al.*,
*Respondents,*

&

INDIANA DEMOCRATIC PARTY, *et al.*,
*Petitioners,*

*v.*

TODD ROKITA, INDIANA SECRETARY OF STATE, *et al.*
*Respondents.*

**On Appeal from the United States Court Of Appeals for the Seventh Circuit**

## BRIEF OF THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC. AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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## INTEREST OF AMICUS[1]

The NAACP Legal Defense and Educational Fund, Inc. ("LDF") is a nonprofit corporation chartered by the Appellate Division of the New York Supreme Court as a legal aid society. The Legal Defense Fund's first Director-Counsel was Thurgood Marshall. Since its founding in 1939, LDF has been committed to enforcing legal protections against racial discrimination and to securing the constitutional and civil rights of African Americans. *See NAACP v. Button*, 371 U.S. 415, 422 (1963) (describing LDF as a "'firm' . . . which has a corporate reputation for expertness in presenting and arguing the difficult questions of law that frequently arise in civil rights litigation").

LDF has an extensive history of participation in efforts to eradicate barriers to the full political participation of African Americans and to eliminate racial discrimination from the political process. LDF has represented parties or participated as amicus curiae in numerous voting rights cases before this Court and the United States Courts of Appeals. *See, e.g., League of United Latin Am. Citizens v. Perry*, 126 S. Ct. 2594 (2006); *Georgia v. Ashcroft*, 539 U.S. 461 (2003); *Easley v. Cromartie*, 532 U.S. 234 (2001); *Bush v. Vera*, 517 U.S. 952 (1996); *Shaw v. Hunt*, 517 U.S. 899 (1996); *United States v. Hays*, 515 U.S. 737 (1995); *Chisom v. Roemer*, 501 U.S. 380 (1991); *Houston Lawyers' Ass'n v. Tex. Attorney Gen.*, 501

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[1] Letter of consent by the parties to the filing of this brief have been lodged with the Clerk of this Court. No counsel for any party in these consolidated cases authored this brief in whole or in part, and no person or entity, other than *amicus*, made any monetary contribution to its preparation.

U.S. 419 (1991); *Thornburg v. Gingles*, 478 U.S. 30 (1986); *League of United Latin Am. Citizens v. Clements*, 999 F.2d 831 (5th Cir. 1993) (*en banc*), *cert. denied*, 510 U.S. 1071 (1994).

Because of its longstanding commitment to the elimination of racial discrimination in the political process and the protection of the voting rights of African Americans, LDF has an interest in these appeals, which present important issues concerning minority voters' ability to meaningfully access the political process in the face of Indiana's adoption of a government-issued photo identification requirement.

## SUMMARY OF ARGUMENT

Although the Court of Appeals seems to trivialize the value of the right to vote, describing "the benefits of voting to the individual" as "elusive," *Crawford v. Marion County Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007), that characterization is plainly contrary to the Constitution and this Court's jurisprudence. Instead, "the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civic and political rights." *Reynolds v. Sims*, 377 U.S. 533, 562 (1964). The Indiana statute at issue in these cases demands, therefore, not only a searching review of the burden imposed on individuals, but also consideration of the disproportionate burdens faced by voters who have enjoyed unfettered access to the vote as a result of this Court's precedents.

We agree with petitioners that the impact on some individuals — effective vote denial — is significant and requires Indiana's law to be

invalidated. *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992). We urge the Court to consider the likelihood that laws like Indiana's photo identification requirement will disfranchise some of the most vulnerable communities in our nation, whose access to the ballot is critical to the integrity of our participatory democracy.

Millions of Americans do not possess the form of government-issued photo identification required under Indiana's law, and that group is disproportionately poor and minority. Accordingly, the impact of laws like Indiana's, which conditions the right to vote on the presentation of identification, will effectively fence out of the electorate significant numbers of African Americans, and will have a particularly burdensome impact in the places where impoverished African Americans are concentrated. Significantly, Indiana's law stands as a barrier not only to voters who have previously participated under state voting standards that afforded greater access, as also to the political mobilization of eligible, but yet unregistered citizens whose right to participate is of no less constitutional import.

The demographic profile of Indiana bears this out. Although Indiana's law requiring the presentation of government-issued photo identification may not, at first glance, appear to have a pernicious impact, poor African Americans will bear the burden of the restriction more than any other group.

Moreover, because there can be no question that areas of concentrated poverty include a disproportionately high number of citizens who lack the type of identification that would meet the

demands of Indiana's law, there is significant reason for concern that the adoption of similar photo identification requirements would have an extraordinary impact at the local level in many places. Such statutes would threaten to disfranchise significant portions of the electorate in many cities and counties.

Taken together, the primacy of voting in our democracy, the stringency of the Indiana law, and the reality that the franchise has long provided our nation's socio-economically disadvantaged racial minorities with the only tangible means of accessing the political process and asserting their interests, should lead this Court to employ its strictest review and invalidate the statute.

## ARGUMENT

### I. The Proliferation of Photo Identification Laws Like Indiana's Would Have A Devastating Impact on Access to the Franchise for Many Poor African Americans.

Stringent photo identification laws like Indiana's, which condition access to the franchise on the presentation of government issued photo identification, present extraordinary barriers to the most marginalized individuals in American society.

Although the Indiana photo identification law may not have a significant impact on the rights of some voters, its impact on the rights of poor citizens, who are disproportionately African American, is significant. Certainly, a segment of the population of Indiana carries identification deemed sufficient to

satisfy the strictures of the Indiana law. Just as certainly, however, there are significant segments of the population that do not possess the necessary documentation, and many of these persons face real-world barriers in obtaining it. The reality faced by those who possess qualifying identification may be a world apart from those who do not and will not.

Indeed, recent experience provided powerful reminders that socio-economic disadvantage can have very serious consequences. As President Bush observed following Hurricane Katrina:

> [T]here's also some deep, persistent poverty in the region . . . . That poverty has roots in a history of racial discrimination, which cut off generations from the opportunity of America.

Press Release, President Discusses Hurricane Relief in Address to the Nation, (Sept. 15, 2005), http://www.whitehouse.gov/new/releases/2005/09/20050915-8.html.

President Bush's reference to the social and political reality of New Orleans' African-American poor, exposed to the world in the wake of Hurricane Katrina, could have just as easily referred to any of the countless communities across the United States where African Americans are segregated and live in concentrated poverty.

People who live in concentrated poverty are disproportionately poor, underemployed, have less education and wealth, and lower rates of access to quality healthcare. Whatever doubts existed before the flood waters inundated New Orleans, it quickly became clear that significant numbers of the city's

residents simply did not have the resources to evacuate when Katrina loomed. Although some tried to sound the alarm before the storm about the desperate condition of that group — for example, the Times-Picayune reported that approximately 134,000 New Orleanians would be unable to access transportation and evacuate in the face of a major hurricane — those warnings were obviously not heeded. Bruce Nolan, *In Storm, N.O Wants No One Left Behind; Number of People Without Cars Makes Evacuation Difficult*, TIMES-PICAYUNE, July 24, 2005, at 1.

Moreover, in Indiana, as in the nation, segregated African-American communities are very often defined both by race and poverty. "Despite positive trends in the 1990s, almost every major American city still contains neighborhoods that mirror the Lower Ninth Ward demographically and economically." Alan Berube & Bruce Katz, Brookings Institution, *Katrina's Window: Confronting Concentrated Poverty Across America*, (Oct. 2005), ("*Katrina's Window*") http://www.brookings.edu/metro/pubs/20051012_Concentratedpoverty.pdf. Among them is Indianapolis, which has three "extreme poverty neighborhoods," *i.e.*, census tracts in which at least 40 percent of the population lives in families with incomes below the federal poverty threshold." *Id.* (App. A). African Americans in these neighborhoods have the highest concentrated poverty rate as compared to whites and Latinos in Indianapolis. *Id.* In addition, Gary, Indiana is among the most segregated metropolitan areas in the country. *See* Bill Dolan, *The Great Divide*, N.W. IND. & ILL. TIMES (Dec. 10, 2006), *available at* http://www.nwitimes.com/articles/2006/

12/10/news/top_news/9127e826329a71ca8625723f0082d99d.txt.

Critical to the analysis of laws like Indiana's that limit access to the franchise is the Constitution's demand that no class of voters be systematically excluded from the franchise. Aside from the Fifteenth Amendment's prohibition on "fencing Negro citizens out" of the ballot box, *Gomillion v. Lightfoot*, 364 U.S. 339, 341 (1960), the Fourteenth Amendment demands "strict review of statutes distributing the franchise." *Dunn v. Blumstein*, 405 U.S. 330, 337 (1972). "[S]trict review" is particularly important when such statutes may have a discriminatory impact. *See Clingman v. Beaver*, 544 U.S. 581, 603 (2005) (O'Connor, J., concurring); *Anderson v. Celebrezze*, 460 U.S. 780, 792-93 & n.15 (1983); *Bullock v. Carter*, 405 U.S. 134, 144 (1972).

In America, which continues to be marked by intense racial and economic segregation, the franchise is the one tool that places citizens on equal footing with all others. Moreover, in areas of concentrated poverty, African-American suffrage has always been a key element for providing access to the political, social and economic capital necessary to bring about change. Laws like Indiana's place such onerous burdens on access to the ballot box for these voters.

Race remains a barometer of social, political, and economic opportunity in America. And, although some African Americans have made significant progress, widespread racial inequality persists. For example, the African-American poverty rate is among the highest of all races at 24.9 percent.

and nearly three times the poverty rate for whites, which is 8.3 percent. National Urban League Equality Index *in* THE STATE OF BLACK AMERICA 2007 17, 20 (Stephanie J. Jones, ed., 2007). Similarly, the African-American unemployment rate is nearly twice the unemployment rate for whites. *Id.* at 23. This limitation on economic equality also influences other areas. African Americans are more likely to rely on public transportation than whites, *id.* at 24, more likely to lead single parent households than their white counterparts, DOUGLASS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 140 (1993), and, if they can obtain employment, more likely to live outside the community where they are employed. Sean B. Seymore, *Set the Captives Free! Transit Inequity in Urban Centers, and the Laws and Policies Which Aggravate the Disparity*, 16 GEO. MASON U. CIV. RTS. L.J. 57, 70 (2005).

It is the combination of poverty and racial segregation, however, that exacerbates the critical dividing line that race plays in American society. The persistence of segregation is particularly striking among African Americans despite increasing racial diversity in the nation as a whole. As described in a seminal work on the topic:

> No group in the history of the United States has ever experienced the sustained high level of residential segregation that has been imposed on blacks in large cities for the past fifty years. . . . Not only is the depth of black segregation unprecedented and utterly unique compared with that of other groups, but it

> shows little sign of change with the passage of time or improvements in socioeconomic status.

MASSEY & DENTON at 2.

Recent data reveals that little, if anything, has changed since Massey and Denton described this phenomenon in 1993. A recent review of census data revealed that "[t]he 1980 to 2000 period saw moderate declines in black-white segregation, though blacks continued to be highly segregated and more segregated from non-Hispanic whites than other groups." John Iceland, *Racial and Ethnic Residential Segregation and the Role of Socioeconomic Status, 1980-2000*, *in* FRAGILE RIGHTS WITHIN CITIES: GOVERNMENT, HOUSING & FAIRNESS 107, 117 (John Goering ed., 2007). Indeed, African Americans remain the most residentially segregated group in the United States. John Iceland et al., *U.S. Census Bureau, Racial and Ethnic Segregation in the Untied States: 1980-2000* at 95 (2002), *available at* http://www.census.gov/hhes/www/housing/housing_patterns/pdf/ch7.pdf.

Some laws can have the effect of amplifying residential segregation, concentrated poverty, and their resulting social disadvantages, and transfer inequality into the political process. As described by two scholars:

> Participation in electoral politics is costly. Without money, it is impossible to contribute financially to a campaign. Without time, energy, transportation, and child care, it is difficult, even impossible, to volunteer to work for a candidate. Even the simple act of voting requires people to register, to gather and

> digest a mass of information about the candidates, to make choices, and to get to the polls come election day. Participation in electoral campaigns puts many strains on people's resources, and people with ample resources are better able to participate than people with meager resources.

STEVEN J. ROSENSTONE & JOHN MARK HANSEN, MOBILIZATION, PARTICIPATION, AND DEMOCRACY IN AMERICA 133-34 (1993). In short, the legacy of official discrimination against African Americans in the United States continues to have an appreciable impact on the lives of African Americans, particularly those who live in areas with concentrated poverty, which restricts their ability to vote.

Voter identification laws like Indiana's will, therefore, have a disproportionate impact on African Americans. In striking comparison to a former Virginia law that required presentation of a certificate indicating payment of a poll tax before adult citizens could vote, the Indiana photo identification law will "tend[] to eliminate from the franchise a substantial number of voters who did not plan so far ahead." *Harman v. Forssenius*, 380 U.S. 528, 539-40 (1965).

## II. Photo Identification Laws Create Constitutionally Forbidden Restrictions on the Right to Vote that Disparately Impact African Americans.

Given that the communities in which many poor African Americans live are characterized by tremendous disadvantage, access to the franchise is

critically important. Indeed, exercise of the franchise represents one of the few vehicles available to impact or change the very fragile conditions faced by many African Americans who remain isolated in inner cities characterized by concentrated poverty.

This Court cogently described the importance of the interest in the franchise for African-American residents of Indianapolis over 35 years ago: "There exists within Marion County an identifiable racial element, 'the Negro residents of the Center Township Ghetto,' with special interests in various areas of substantive law, diverging significantly from interests of nonresidents of the ghetto." *Whitcomb v. Chavis*, 403 U.S. 124, 134-35 (1971). "These Negro residents have interests in areas of substantive law such as housing regulations, sanitation, welfare programs . . . garnishment statutes, and unemployment compensation, among others, which diverge significantly from the interests of nonresidents of the Ghetto." *Id.* at 135 n.12 (internal quotation marks omitted). Today, the social disadvantage plaguing the African-American residents of Marion County bears striking resemblance to the conditions they faced over 35 years ago. Thus, unfettered access to the ballot box remains a crucial method — and perhaps the only realistic one — for marginalized African-American communities in Indianapolis, and others similarly situated, to pursue the goals of racial and social equality.

In short, these citizens can least contend with barriers that restrict or deny the exercise of the right to vote, and are most likely to be excluded by requirements that condition access to the ballot box

on the presentation of photo identification. The Fourteenth and Fifteenth Amendments to the Constitution do not permit unnecessary impediments to political participation in our democratic process. Consequently, laws such as Indiana's photo identification measure, which erect clearly discernible barriers for poor African Americans, without concomitant benefits, deserve careful scrutiny.

As this Court has repeatedly explained, the right to vote is a "fundamental political right, . . . preservative of all rights." *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886); *see also Williams v. Rhodes*, 393 U.S. 23, 31 (1968); *Reynolds*, 377 U.S. at 562. Any measures that serve to restrict a certain class of otherwise eligible citizens from the franchise are therefore subject to strict review. "In decision after decision, this Court has made clear that that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction." *Dunn*, 405 U.S. at 336. The right to vote has never been dependent upon a voter's station in life, viewpoint, or intelligence, and any qualifications that would impose such preconditions can not survive scrutiny under this Court's precedents. *See id.* at 355-60 (citing, *inter alia*, *Evans v. Cornman*, 398 U.S. 419 (1970); *Ciriano v. City of Houma*, 395 U.S. 701 (1969); *Kramer v. Union Free Sch. Dist.*, 395 U.S. 621 (1969)).

Therefore, election regulations that serve to "fenc[e] out from the franchise," entire classes of people otherwise eligible to vote threaten the "'[e]xercise of rights so vital to the maintenance of

democratic institutions.'" *Carrington v. Rash*, 380 U.S. 89, 94 (1965) (quoting *Schneider v. State*, 308 U.S. 147, 161 (1939)). The Fourteenth Amendment demands that the right to vote is not limited to citizens at the center of our society but extends to our most marginalized. Thus, a regulation that unnecessarily excludes eligible voters from the franchise must be carefully reviewed. *See Purcell v. Gonzalez*, 126 S. Ct. 5, 7 (2006) (*per curiam*) ("[T]he possibility that qualified voters might be turned away from the polls would caution any district judge to give careful consideration to the plaintiffs' challenges."); *Dunn*, 405 U.S. at 336 ("[A]s a general matter, before that right [to vote] can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet close constitutional scrutiny." (internal quotation marks and citation omitted)). This close review is required because of the severity of the restriction on the right to vote, *i.e.*, effective vote denial. *See Burdick*, 504 U.S. at 434 ("[T]he rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights."); *Dunn*, 405 U.S. at 336. An appropriate analysis ensures that a state regulation does not create barriers that fence out those voters who face the greatest difficulty in satisfying the requirement, regardless of whether the burden is attributable to their poverty, limited time, or limited mobility. *Cf. Harper v. Virginia*, 383 U.S. 663, 667-68 (1966) (discussing financial impediments to the ballot).

Statutes like Indiana's that selectively limit the franchise and pose the "danger . . . of denying some citizens any effective voice in the governmental

affairs which substantially affect their lives," *Kramer*, 395 U.S. at 626-27, warrant particular concern because of their targeted impact. *See Clingman*, 544 U.S. at 603 (O'Connor, J., concurring); *Anderson*, 460 U.S. at 792-93 & n.15; *Bullock*, 405 U.S. at 144.

## III. Indiana's Government-Issued Photo Identification Requirement Will Exclude Otherwise Qualified Voters from the Franchise, and Have a Disparate Impact on African Americans.

### A. The Class of Citizens Effectively Disfranchised by Photo Identification Laws Like Indiana's Is Disproportionately African-American.

All the available evidence indicates that the most marginalized African-American communities, where the poor are concentrated, are least likely to overcome the barriers imposed by stringent photo identification laws like Indiana's.

Nationally, "6 to 10 percent of the American electorate does not have official state identification." *To Assure Pride and Confidence – Task Force Reports to Accompany the Report of the National Commission on Election Reform*, Chapter I – Verification of Identity, at 4 (2001), *available at* http://millercenter.virigina.edu/programs/natl_commissions/commission_final_report/task_force_report/complete.pdf. However, that part of the citizenry is not evenly distributed across racial and income groups. A recent national survey found that 25 percent of African-American voting age citizens have

no current government-issued photo ID, compared to 8 percent of white voting-age citizens. Brennan Center for Justice, *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification* (Nov. 2006), at 3, *available at* http://www.vote.caltech.edu/VoterID/CitizensWithoutProof.pdf.[2] Moreover, the same study found that "[c]itizens earning less than $35,000 per year are more than twice as likely to lack current government-issued photo identification as those earning more than $35,000." *Id.*

Other studies demonstrate similar disparities. In Georgia, for example, African-American registered voters are nearly twice as likely to be without driver's licenses as white registered voters. M.V. Hood, III & Charles S. Bullock, III, *Worth a Thousand Words? An Analysis of Georgia's Voter Identification Statute*, 15 (Apr. 2007), http://www.vote.caltech.edu/VoterID/GAVoterID(BullockHood).pdf. In addition, rural and urban Georgia voters were less likely to possess a driver's license than suburban voters. *Id.* at 16.

Similarly, a study of California, New Mexico and Washington voters found that minority voters are less likely to have various forms of identification, such as driver's licenses, birth certificates, or bank statements. Matt A. Barreto, Stephen A. Nuño, Gabriel R. Sanchez, *Voter ID Requirements and the*

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[2] This conclusion is consistent with the results of the U.S. Department of Transportation's 2001 National Household Travel Survey revealed that only 57 percent of African-Americans are drivers, as compared to 73 percent of whites. *See* National Household Travel Survey (2001), *available at* http://nhts.ornl.gov.

*Disenfranchisements of Latino, Black and Asian Voters*, Am. Pol. Sci. Ass'n Presentation (Sept. 1, 2007).

In addition, statutes that condition access to the ballot on the presentation of government-issued photo identification, like other restrictive prerequisites and burdens that have been tied to voting historically, will constrict the size of the electorate and present a barrier to the franchise for both registered and unregistered citizens. Numerous political scientists have found a correlation between the number and complexity of qualifications tied to the exercise of the franchise and depressed turnout and participation rates.[3]

Empirical evidence demonstrates that turnout declines as administrative barriers to voting, such as voter registration requirements, are erected. *See* RAYMOND E. WOLFINGER & STEVEN J. ROSENSTONE, WHO VOTES? 61 (1980). In addition, some commentators assert that registration laws are the primary reason voting rates vary according to socio-economic status. *See* FRANCES FOX PIVEN & RICHARD A. CLOWARD, WHY AMERICANS DON'T VOTE 117-18 (1988).

Therefore, it is reasonable to conclude that a law like Indiana's demanding the acquisition of government-issued photo identification for those who do not have it, or maintaining a valid one, like

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[3] It is also worth noting that *any* photo identification that might allow a voter to cast a ballot is likely to be difficult to obtain for poor people. We concentrate our discussion on driver's license possession here because it is the type of photo identification most likely to fulfill the Indiana statute's requirement because it is the most available.

registration, "raises the costs of voting," WOLFINGER & ROSENSTONE, at 61, and will operate to depress turnout. In stark contrast, one study of three states allowing Election Day registration, found an increase in average turnout and participation rates. Craig Leonard Brians & Bernard Grofman, *Election Day Registration's Effect on U.S. Voter Turnout*, 82 SOC. SCI. Q. 170 (2001).

The *Crawford* petitioners have discussed at length the barriers that a voter may encounter when attempting to procure such identification and the particular difficulty for those who lack resources, and we will not repeat them here. *See* Br. of *Crawford* Pet'rs at 15-19. The Missouri Supreme Court's analysis of the difficulties of obtaining photo identification applies, however, with equal force everywhere that Americans live in poverty. There, the court found that "for Missourians who live beneath the poverty line, the $15 they must pay in order to obtain their birth certificates and vote is $15 that they must subtract from their meager ability to feed, shelter and clothe their families." *Weinschenk v. State*, 203 S.W.2d 201, 214 (Mo. 2006).

The cost imposed by a government issued photo identification requirement is not limited to the fee one must pay to obtain or renew the identification or underlying documents. Such requirements also strip voters with limited means of the ability to participate in elections in the only realistic way members of marginalized communities

exercise influence over the political process — casting a vote that counts.[4]

In sum, all data strongly support an inference that laws like Indiana's that require the presentation of government issued photo identification as a prerequisite for in-person voting will have a significant disparate impact on African Americans, particularly in areas of concentrated poverty.[5]

### B. The Combination of Intense Segregation and Photo Identification Laws Could Erode Participatory Democracy at the Local Level in Many American Cities.

Aside from the burden imposed on the right to vote described above, photo identification laws like Indiana's have the potential to disfranchise significant portions of the electorate in local elections. A conclusive study of driver's license possession in Wisconsin confirms this suspicion, and

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[4] Typically, impoverished inner city residents do not make campaign contributions, or encounter living room fundraisers in their neighborhoods. For example, in the 2000 presidential election cycle, "people of color were grossly underrepresented, not only among contributors of amounts over $200, but also among contributors of $100 or less." Spencer Overton, *The Donor Class: Campaign Finance, Democracy, and Participation*, 153 U. PA. L. REV. 73, 102 & n.109, 118 n.162 (2004) (noting that approximately 96 percent of donors in the 2000 election cycle who contributed over $200 were white).

[5] Though the impact in urban centers may be most concentrated, the impact on poor African Americans in rural and other settings is significant as well.

foretells what could become a national problem with the adoption of restrictive photo identification laws like Indiana's in urban areas throughout the country.

Wisconsin is an appropriate example because it is a state with a significantly segregated African-American population. The state is only 5.9 percent African-American, but over 73 percent of the state's African-American population resides in Milwaukee County. *See* U.S. Census Bureau, State & County QuickFacts, http://quickfacts.census.gov/qfd/states/55/55079.html. Milwaukee County's most densely populated area, the City of Milwaukee, is 37.3 percent African-American, and contains 42 extreme poverty census tracts, where at least 40 percent of the population reside in households with incomes below the federal poverty threshold. *Katrina's Window*, App. A. A disproportionate number of these families are African-American. *Id.*

Although 80 percent of men and 81 percent of women have valid driver's licenses statewide, only 45 percent of African-American men, and 51 percent of African-American women have valid driver's licenses. John Pawasarat, Employment and Training Institute, University of Wisconsin-Milwaukee, *The Driver's License Status of the Voting Age Population in Wisconsin*, 3 (June 2005), www.uwm.edu/ETI/ barriers/DriversLicense.pdf. This disparity is similarly stark in Milwaukee County, where 73 percent of white residents, but just 47 percent of African Americans have valid driver's licenses. *Id.* at 22.

Applying a law like Indiana's to an electorate like Milwaukee's would effectively disfranchise a

significant portion of the city's African-American citizenry. Such a law would, therefore, effectively and dramatically shrink the size of the electorate in races for Milwaukee's mayor, city council, and other elected positions and increase the weight of votes cast by those who could satisfy the voter identification requirement.

The disparities in driver's license possession in Wisconsin strongly support the inference that the citizens of racially isolated and impoverished urban centers are likely to be excluded from the franchise at a disparate rate, and thereby fenced out of the state's democratic process. Such laws pose precisely the type of threat to the "legitimacy of representative government" that compromises the integrity of our democracy. *See Kramer*, 395 U.S. at 626.

## CONCLUSION

African Americans isolated in communities characterized by concentrated poverty are less likely to possess government-issued photo identification. As a result, voter identification requirements like Indiana's deny marginalized communities the opportunity to participate equally in the political process and undermine the principles at the root of our participatory democracy. For the foregoing reasons, the judgment of the Court of Appeals should be reversed.